



COUNCIL AGENDA: 03-16-04  
ITEM:

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Jim McBride

**SUBJECT:** SEE BELOW

**DATE:** March 3, 2004

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Approved

Date

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**COUNCIL DISTRICT:** City-Wide

**SUBJECT: BALLET SAN JOSE SILICON VALLEY ELIGIBILITY EXEMPTION  
PETITION**

## **RECOMMENDATION**

Adoption of a resolution providing Ballet San Jose Silicon Valley with an exemption from eligibility requirements for the Arts Grants: Operating Grant Program pertaining to accessibility for persons with disabilities to allow the Ballet's grant application to be considered in the review process for FY2004-05 grant awards, which exemption is conditioned upon the Ballet providing the City, no later than November 30, 2004, with a specific work plan and timeframe for meeting the grant program's accessibility requirements.

## **BACKGROUND**

In a letter dated February 16, 2004, Ballet San Jose Silicon Valley petitioned the City for an exemption from two eligibility requirements set forth in the Operating Grant Program guidelines that it cannot meet.

One, which applies to any organization seeking an operating (arts) grant, stipulates that the "organization provides its arts activities in venues that are accessible to people with disabilities."

The other requirement, which applies to otherwise eligible organizations that wish to be classified within the Professional Arts Institution or Regional Arts Institution categories, stipulates that they must have "demonstrable use of wheelchair-accessible administrative offices and rehearsal, training or other facilities necessary to prepare programs."

When the Ballet submitted its application for an FY2004-05 operating grant in February, it indicated that it does not meet the disability access requirements set forth in the arts grant

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program guidelines. Upon review, and when it ascertained that the Ballet was correct that it did not meet the accessibility guidelines, City staff notified the Ballet's executives that it is not eligible for the FY2004-05 Operating Grant Program application cycle.

## **ANALYSIS**

The Ballet's petition letter is attached and, therefore, this memo will not repeat the Ballet's explanation of its circumstances. Given the well publicized financial challenges it faces, the Ballet's situation clearly is a difficult one. However, the Ballet's petition also creates a challenge for the City in weighing the requirements of equitable and fair treatment for all grant applicants, as well as the implications for disabled members of the community.

Staff recommends against providing the Ballet with an open-ended waiver, as its petition requests. By its own account, the Ballet has not yet explored key avenues for resolving the problem at the heart of its petition, i.e., the failure of the Ballet's elevator to meet current standards and the State of California's refusal to certify the elevator in the Ballet's building for use. However, City Council may feel that a waiver from the accessibility requirements for this grant application cycle may be an appropriate approach by the City, pending the Ballet's closer examination of possible avenues to resolve its dilemma.

Therefore, it is proposed that the Council consider granting the Ballet an exemption from the arts grant program accessibility requirements for the current grant application cycle, provided that the exemption is conditioned upon the Ballet agreeing to provide the City, by the end of November 2004, with a work plan and timeframe for meeting the Arts Program Operating Grant accessibility requirements.

## **PUBLIC OUTREACH**

The Ballet's petition was discussed by the Arts Commission's Programs Committee at its regularly scheduled monthly meeting on February 25, 2004. It will be reviewed by the full Arts Commission at the Commission's regularly scheduled meeting on Wednesday, March 10, 2004. Because of the very tight timeframe, no further public outreach has been conducted. City Council will be informed of any recommendation made by the Arts Commission through a supplemental memo.

## **COORDINATION**

This memo has been coordinated with the City Attorney.

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### **COST IMPLICATIONS**

As arts grants are awarded from a dedicated pool of funds from Transient Occupancy Tax revenues, allowing the Ballet's application to compete will not have a budgetary impact for the City. However, if the review of the Ballet's application results in an FY2004-05 grant recommendation for the Ballet, funds available for other arts grantees will be reduced accordingly.

### **CEQA**

This is not a project.

JIM McBRIDE

Acting Director, Conventions, Arts and Entertainment

Attachment